REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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ROXAS FOOD VENTURES, INC.,
Petitioner,

C.T.A. CASE NO. 6947

Members:

\- versus -

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 22 2006

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DECISION

BAUTISTA, J.:

Before Us is a Petition for Review praying for the issuance of a tax credit certificate in the amount of P714,458.00 allegedly representing overpaid income tax, due to the erroneous treatment of the 20% sales discounts given to qualified senior citizens, as deductions from gross income prescribed by Revenue Regulations No. 2-94 instead of as tax credits as provided for under Republic Act No. 7432.

Petitioner is a duly organized domestic corporation engaged in the restaurant business under the business name and style "The Aristocrat Restaurant", with business address at 432 San Andres St., Malate, Manila[1], while respondent is the duly appointed Commissioner of Internal Revenue empowered, among others, to grant claims for refund/tax credit of overpaid income taxes, with office address at BIR National Office Building, Diliman, Quezon City.

During the fiscal year ending June 30, 2002, petitioner allegedly granted, in compliance with Republic Act (R.A.) No. 7432,[2] 20% sales discounts in the amount of P1,050,674.00 to qualified senior citizens on their purchases of food and beverages and/or availment of petitioner's services.

In its income tax return for fiscal year ending June 30, 2002 filed on October 15, 2002,[3] petitioner allegedly was forced to claim as deduction from its gross income the amount of P1,050,674.00, representing 20% sales discounts to senior citizens in accordance with Section 2(i) of Revenue Regulations No. 2-94, which implements Section 4 of Republic Act No. 7432.

On December 11, 2003, petitioner filed with the Bureau of Internal Revenue (BIR) a letter requesting for a refund in the amount of P714,458.00[4] allegedly representing overpaid income tax/tax credit for the fiscal year ended June 30, 2002 arising from the erroneous treatment of the twenty (20%) percent sales discounts to senior citizens as deductions from gross income as prescribed by Section 2(i) of Revenue Regulations No. 2-94, instead of as tax credits as provided for under Section 4 of R.A. No. 7432, the computation of which[5] is shown as follows:

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[1] Paragraph 1, Facts Admitted, Records, p. 49
[2] "An Act to Maximize the Contribution of Senior Citizens to Nation Building, Grant Benefits and Special Privileges and for Other Purposes"
[3] Exhibit "A"
[4] Exhibit "C"
[5] Exhibits "D" and "L-2"

Gross Sales	P243,864,760.00
Less: Senior Citizen 20% discount	-
Net Sales	P243,864,760.00
Less: Cost of Sales	154,953,404.00
Gross Profit	P 88,911,356.00
Less: Operating expense	81,506,649.00
Operating Income	P 7,404,707.00
Add: Other Income	817,153.00
Net Income before Income Tax	8,221,860.00
Income Tax Due (32%)	P 2,687,894.00
Less: Tax Credit	
Senior Citizens 20% discount	1,050,674.00
Income Tax Payable	P 1,637,220.00
Income Tax Actually Paid	2,351,678.00
Tax Refundable	**P (714,458.00)**

Due to respondent's inaction on its claim, petitioner elevated its case before this Court via a Petition for Review filed on April 15, 2004.

Respondent, in his Answer to the Petition for Review, interposed the following Special and Affirmative defenses, to wit:

4. Revenue Regulations No. 2-94 did not alter, modify or amend the intent of the law to consider the 20% discount granted to qualified senior citizen as deduction from petitioner's gross income and not as credit against its tax liability as petitioner insists;

5. With the accumulation of experience and growth of specialized capabilities by the agency charged with implementing a particular statute, it is now a recognized principle that the construction given to a statute by an administrative agency charged with the interpretation and application of that statute is entitled to great respect and should be accorded great weight by the courts, unless such construction is clearly shown to be in sharp conflict with the governing statute or the constitution and other laws (*Nestle Philippines, Inc. vs. CA, et al., 203 SCRA 504);*

6. R.A. 7432 allows the discounts granted to senior citizens to be claimed as a tax credit but is silent as to the mechanics of availing the same. For clarification and as a curative measure, Revenue Regulations No. 2-94 was issued defining the term "tax credit" as used in the law and providing therein the manner of claiming the same, which is by deduction from the establishment's gross income and not from its income tax liability. Otherwise an absurdity, not intended by law, will arise;

7. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;

8. The amount of P714,458.00 being claimed by petitioner as alleged sales discount to senior citizens on their purchases of food and beverages and/or availment of its services for taxable years 1999 and 2000 [should be for the fiscal year ending June 30, 2002] was not properly documented as well as its gross income;

9. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden to the claim for refund/claim;

10. Petitioner must show that it has complied with the provisions of Sections 204 (C) and 229 of the Tax Code for claiming tax refund/credit;

11. Claims for refund are construed strictly against the claimant as the same partake [of] the nature of exemption from taxation.

The parties mutually agreed on the issues to be resolved by this Court, as follows:

1. Whether or not the petitioner is entitled to the overpaid income tax/tax credit arising from the treatment of the twenty (20%) percent sales discounts granted by petitioner to qualified senior citizens in the year ended June 30, 2002 in compliance with R.A. 7432;

2. Whether or not during the period from July 1, 2001 to June 30, 2002, petitioner granted 20% sales discount to qualified senior citizens on their purchases of food and beverages and/or availment of its services in the amount of P714,458.00 in compliance with R.A. 7432 and implementing rules; and

3. Whether or not petitioner has substantiated the claim for refund.

The principal issue posed for this Court's resolution is: *Whether or not petitioner is entitled to the issuance of a tax credit certificate in the amount of P714,458.00 arising from its treatment of the 20% sales discounts granted to qualified senior citizens as deductions from gross income as prescribed by Revenue Regulations No. 2-94 instead of as tax credits as provided for under Republic Act No. 7432.* To resolve this issue, it necessitates the determination of the proper treatment of the 20% sales discounts granted to qualified senior citizens, pursuant to R.A. No. 7432.

In numerous cases,[6] this Court has consistently ruled that the 20% sales discounts given to senior citizens should be treated as tax credits deductible from the tax due, as provided for under R.A. No. 7432 and not merely as deductions from gross income, as prescribed by Revenue Regulations No. 2-94. In the case of ***Commissioner of Internal Revenue vs. Central Luzon Drug Corporation, G.R. No. 159647, April 15, 2005***, the Supreme Court affirmed this Court's ruling and held that:

> The 20 percent discount required by law to be given to senior citizens is a *tax credit*, not merely a *tax deduction* from the gross income or gross sale of the establishment concerned. A *tax credit* is used by a private establishment only after the tax has been computed; a *tax deduction*, before the tax is computed. RA 7432 unconditionally grants a tax credit to all covered entities. Thus, the provisions of the revenue regulation that withdraw or modify such grants are void. Basic is the rule that administrative regulations cannot amend or revoke the law.
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> xxx xxx xxx
>
> ***Grant of Tax Credit***
> ***Intended by the Legislature***
>
> *Fifth,* RA 7432 itself seeks to adopt measures whereby senior citizens are assisted by the community as a whole and to establish a program beneficial to them. These objectives are consonant with the constitutional policy of making "health x x x services available to all the people at affordable cost" and of giving "priority for the needs of the x x x elderly." Sections 2.i. and 4 of RR 2-94, however, contradict these constitutional policies and statutory objectives.
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> Furthermore, Congress has allowed all private establishments a simple *tax credit,* not a deduction. In fact, no cash outlay is required from the government for the *availment* or *use* of such credit. The deliberations on February 5, 1992 of the Bicameral Conference Committee Meeting on Social Justice, which finalized RA 7432, disclose the true intent of our legislators to treat the *sales discounts* as a *tax credit,* rather than as a deduction from *gross income.* xxx *(Underlining supplied)*

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[6] San Agustin Drug Corporation v. Commissioner of Internal Revenue, CTA Case No. 6536, November 25, 2004; Commissioner of Internal Revenue vs. Baliuag Drug Corporation, CTA EB No. 75, July 28, 2005; Northern Luzon Drug Corporation v. Commissioner of Internal Revenue, CTA Case No. 6667, October 19, 2005.

A cursory reading of the phraseology of Section 4 of R.A. No. 7432 would reveal that the law in plain and simple language intended the cost of the 20% discounts to be claimed as tax credit by private establishments. To quote:

> SEC. 4. Privilege for the Senior Citizens. – The senior citizens shall be entitled to the following:
>
> (a) the grant of twenty percent (20%) discount from all establishments relative to utilization of transportation services, hotels and similar lodging establishments, restaurants and recreation centers and purchase of medicine anywhere in the country: *Provided,* That private establishments may claim the cost as tax credit: xxx

The discounts being available for tax credit as stated in the law cannot be made incoherent to mean that such discount ought to be utilized instead as a deduction from gross income and gross sales as what is provided in Section 2(i) of Revenue Regulations No. 2-94, to wit:

> i. Tax credit – refers to the amount representing the 20% discount granted to a qualified senior citizen by all establishments relative to their utilization of transportation services, hotels and similar lodging establishments, restaurants, drugstores, recreation centers, theaters, cinema houses, concert halls, circuses, carnivals and other similar places of culture, leisure and amusement, which discount shall be deducted by the said establishments from their gross sales for value-added tax or other percentage tax purposes.

It is elementary rule that administrative regulations should not run counter to the law that it seeks to implement. It cannot reign supreme over the law passed by the legislature. To be valid, administrative regulations must conform to the standards that the law prescribes.

In view thereof, petitioner may legally claim for the issuance of a tax credit for overpaid income tax resulting from the erroneous deduction from gross income of the 20% sales discounts to senior citizens for the fiscal year ending June 30, 2002, as long as the provisions of Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997 have been complied with. We quote:

> SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —
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> xxx xxx xxx
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> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however*, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.
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> SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. *(Underscoring Ours)*

Based on the above and in accordance with well-established jurisprudence,[7] petitioner has two (2) years from the date of filing the Final Adjustment Return within which to file a claim for refund of erroneously paid income tax, both in the administrative and judicial levels. The subject claim covers erroneously paid income tax for the fiscal year ending June 30, 2002 for which petitioner filed its income tax

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[7] ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957; Commissioner of Internal Revenue vs. TMX Sales, Inc., 205 SCRA 184; Commissioner of Internal Revenue vs. The American Life Insurance Co., 244 SCRA 446

return and paid the final amount of income tax due on October 15, 2002. Counting from this date, both the administrative claim filed on December 11, 2003 and this Petition for Review filed on April 15, 2004 were timely made.

Thus, We will now proceed to the issue of whether or not petitioner was able to substantiate its claim.

The various BIR registered guest checks/official receipts[8] submitted in evidence by petitioner proved that the amount of P1,050,674.00 actually represents 20% sales discounts granted by petitioner to senior citizens for the fiscal year ending June 30, 2002.

However, despite the existence of various guest checks supporting the 20% sales discounts of P1,050,674.00 for the subject period, petitioner's claim must still be denied because this Court cannot ascertain from the records whether petitioner's sales to senior citizens (net of the 20% sales discounts) were really declared as part of the sales amount of P242,814,086.00 reflected in its annual income tax return and audited financial statements for the fiscal year ending June 30, 2002.[9] Petitioner merely presented its Working Trial Balance, which shows the following sales and sales discount balances:

SALES				(242,814,085.65)
	Food and refreshment			
		Sales – food	(226,523,089.71)	
		Sales – beverage	(12,059,559.71)	
	Wine and liquor		-	
		Sales - beer & liquor	(3,970,461.22)	
	Sales Discount		1,013,370.26	
	Zero VAT		(1,274,345.27)	

[8] Exhibits "J-1" to "J-15", 804 & Exhibit "L"
[9] Exhibits "A" and "B"

Considering that the above account balances are only summaries of the entries shown in petitioner's books of accounts, this Court cannot determine whether the monthly sales to senior citizens as indicated in the Monthly Summaries of Office for Senior Citizen Affairs (OSCA) Discounts actually formed part of the total sales amount of P242,814.085.65, without the presentation of petitioner's books of accounts, such as the detailed general ledger, cash receipts book, sales book or special record book for sales to senior citizens.

Therefore, for petitioner's failure to sufficiently prove that the net sales to senior citizens were in fact declared in its income tax return for the fiscal year ending June 30, 2002, the subject claim cannot be granted. It must be stressed that the burden is on the taxpayer to prove entitlement to the refund sought by clear and convincing evidence, because in this jurisdiction it is a settled rule that a claim for refund is in the nature of a claim for exemption, hence, should be construed in *strictissimi juris* against the taxpayer ***(Commissioner of Internal Revenue v. Tokyo Shipping Co., Ltd. 244 SCRA 332).***

IN VIEW OF THE FOREGOING, petitioner's claim is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division